

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|---------------------------------|---|--------------------------|
| DEBORA NOVAKOWSKI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 04-356E |
| |) | |
| ELAINE CHAO, SECRETARY, AND THE |) | JUDGE McLAUGHLIN |
| UNITED STATES DEPARTMENT |) | |
| OF LABOR, |) | ELECTRONICALLY FILED |
| |) | |
| Defendants. |) | |

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

AND NOW come Defendants, Elaine Chao, Secretary, and the United States Department of Labor ("DOL"), by and through their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul E. Skirtich, Assistant United States Attorney for the district, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, respectfully move the Court to issue a Protective Order to protect the privacy of employees (present and past) of the DOL and to allow the DOL to release confidential documents for inspection and copying without violating the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a. In further support of this Motion, Defendant avers as follows:

1. Certain documents that may be filed in response to Plaintiff's request for discovery may contain the identifying data pertaining to past and present employees of the DOL. In addition, Plaintiff has requested investigative reports and other documents compiled by Defendant's Office of Inspector

General pertaining to alleged misconduct of another employee. Defendant respectfully maintains that this investigatory file is neither relevant nor likely to lead to the discovery of relevant information pertaining to the subject matter of this litigation.

Further, Defendant avers that the information sought may be highly embarrassing to other employees not involved in the subject matter of the litigation.

Notwithstanding Defendants' expressed objections and reservations, in an attempt to resolve any discovery dispute between the parties, Defendants will provide disclosure of the responsive materials subject to the limitations contained in this Motion and to-be-signed Order.

2. The public disclosure of said information is prohibited by the Privacy Act, 5 U.S.C. § 552a, absent an order from the Court limiting the release of such information.

3. As a result, Defendant requests an Order from this Honorable Court barring the parties in this lawsuit from disclosing any information released under the Order except in connection with this proceeding and as is necessary in connection with this litigation.

4. Counsel for Ms. Novakowski, John Linkosky, Esquire, does not object to this Motion and the granting of a Protective Order.

5. The parties have agreed that this Motion and Order will apply to any documents/information produced at any time during the litigation of this matter.

6. Further, notwithstanding the issuance of a Protective Order, counsel for Ms. Novakowski agrees to keep all information in the produced documents confidential, disclose the content of those documents only as necessary and solely to Plaintiff and/or other pertinent witnesses and/or parties, and upon completion of this action, agree to return all copies of produced documents to the undersigned counsel for the Defendants.

7. This Motion and Protective Order does not waive any discovery objections including those based upon grounds of relevance, attorney client privilege, the Privacy Act, or work product.

WHEREFORE, based upon the above, Defendants, Elaine Chao, Secretary, and the United States Department of Labor, respectfully request that the Court issue a Protective Order pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7418
PA ID No. 30440

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2006, I electronically filed and/or served by first-class U.S. mail, a true and correct copy of the foregoing Motion for Protective Order to the following:

John Linkosky, Esquire
John Linkosky & Associates
715 Washington Avenue
Carnegie, PA 15106

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney